

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

	x	
	:	
UNITED STATES OF AMERICA,	:	Criminal Action
	:	
Plaintiff,	:	No. 2:14-cr-00117
	:	
v.	:	
	:	Date: June 9, 2015
DAVID E. RUNYON,	:	
	:	
Defendant.	:	
	x	

TRANSCRIPT OF SENTENCING HEARING HELD
BEFORE THE HONORABLE THOMAS E. JOHNSTON, JUDGE
UNITED STATES DISTRICT COURT
IN CHARLESTON, WEST VIRGINIA

APPEARANCES:

For the Government: AUSA MEREDITH GEORGE THOMAS
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For the Defendant: ROBERT B. ALLEN, ESQ.
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Probation Officer: Jeff Gwinn

Court Reporter: Ayme Cochran, RMR, CRR

Proceedings recorded by mechanical stenography;
transcript produced by computer.

1 PROCEEDINGS had before The Honorable Thomas E. Johnston,
2 Judge, United States District Court, Southern District of West
3 Virginia, in Charleston, West Virginia, on June 9, 2015, at 2:03
4 p.m., as follows:

5 COURTROOM DEPUTY CLERK: The matter before the Court is
6 the United States of America versus David Runyon, criminal action
7 number 2:14-cr-00117, scheduled for sentencing.

8 THE COURT: Good afternoon. Will counsel please note
9 their appearances?

10 MS. THOMAS: Meredith Thomas on behalf of the United
11 States.

12 MR. ALLEN: Robert Allen and Sam Marsh on behalf of Mr.
13 Runyon. Mr. Runyon is present in the courtroom, Your Honor.

14 THE COURT: Good afternoon.

15 Mr. Runyon, will you please stand, and I will ask the deputy
16 clerk to administer an oath to you at this time.

17 COURTROOM DEPUTY CLERK: Please raise your right hand.

18 **DAVID RUNYON, DEFENDANT, SWORN**

19 THE COURT: You may be seated.

20 Mr. Runyon, do you understand that you are now under oath
21 and you must tell the truth and, if you testify falsely, you may
22 face prosecution for perjury or for making a false statement?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Throughout the course of this hearing, if
25 there's anything that occurs that you don't understand, I want

1 you to feel free to speak up and seek clarification.

2 Also, if at any time you need to confer with your attorneys,
3 I will be pleased to pause the proceedings to allow you to do so.

4 Do you understand all that?

5 THE DEFENDANT: Yes, sir

6 THE COURT: All right. Let me begin by talking about
7 an issue we sort of came across here in the last couple of days,
8 and that is the amended information. The -- my -- actually, my
9 law clerk gets some credit for catching this. I have assumed,
10 understood from the beginning, and I think the parties have, as
11 well, quite frankly, that this was -- the charge contained in the
12 information was extortion.

13 However, when you looked at the precise language of it, it
14 arguably charged attempted extortion, which really doesn't make a
15 whole lot of sense when you're talking about a scheme that went
16 on for years.

17 At first, I looked at it as perhaps charged in the
18 alternative, attempt -- attempted extortion and extortion, but I
19 think, after informal conversations among the parties and the
20 Court about it yesterday, that the most reasonable approach was
21 to file an amended information, which it just dawned on me --
22 give me just a moment.

23 (Pause.)

24 THE COURT: Ms. Thomas, I'm assuming that the change
25 you made is in Paragraph 25; is that correct, the operative

1 paragraph of the extortion count?

2 MS. THOMAS: That is the -- if that is the last
3 paragraph, I have it somewhere, that would be correct.

4 THE COURT: Okay. So, it seemed to me that simply
5 amending the information, frankly, to reflect what we -- I think
6 what we all understood from the beginning, at any rate, and it
7 would be the appropriate course of action then, and that there's
8 really not much else to do on it. It seems to me that there's no
9 prejudice to the defendant in this.

10 Is there anything else we need to do with this?

11 MS. THOMAS: Your Honor, the United States would ask
12 that it just be put on the record with defendant's counsel and
13 defendant that he is in agreement with this amended information.

14 THE COURT: That's what -- yes, that was my intent with
15 that question. Mr. Allen, do you agree with what I've outlined?

16 MR. ALLEN: We have no objection, Your Honor.

17 THE COURT: Mr. Runyon, do you understand, though, what
18 I've been talking about just now about the -- probably what was
19 just a mistake in the language in the original information?

20 THE DEFENDANT: Yes, sir, I do. Yes, sir.

21 THE COURT: And are you in agreement with the
22 amendment?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And are you in agreement that -- I'm sure
25 you've talked with your counsel about this. Are you in agreement

1 that there's nothing more we need to do with this?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: All right. Very well. Then, I view that
4 matter as put to rest.

5 All right. Next, as -- as everyone who was here last time
6 will recall, I had some questions about factual basis for these
7 pleas, and the parties have filed a memorandum and, also, an
8 additional rather lengthy joint stipulation that addresses many
9 of these -- of the concerns, all the concerns that I raised,
10 actually, and so I want to make the following findings with
11 regard to the factual basis:

12 Extortion is not a charge that we see very often in this
13 Court. I've only had one other extortion case that I can recall
14 and the facts were substantially different from this one, but in
15 reviewing the law on this, what I found is that there is a -- at
16 the rock bottom of what needs to be proven in an extortion case,
17 there's a rather passive aspect to it, and so the essence of what
18 I think is charged here, or what needs to be shown here, is that
19 the defendant obtained money with -- from the victim with the
20 victim's consent, that the defendant intended to exploit the fear
21 of the victim, and that the victim's fear was both real and
22 reasonable.

23 And does anybody object to that characterization?

24 I know that more can be proven, but I think, at rock bottom,
25 that's what needs to be shown for the extortion part of -- as

1 opposed to the interstate commerce part of this crime.

2 Are the parties in agreement with that characterization?

3 MS. THOMAS: Yes, Your Honor.

4 MR. ALLEN: Yes, Your Honor, and I think that's
5 justified under the *Billups* case, which is something we looked at
6 very closely before we even entered the plea.

7 THE COURT: Well, and I looked at some other cases, as
8 well, and I think that's a fair characterization of it and, as
9 that is characterized, the defendant's participation, and I'm not
10 saying that this is necessarily a fair characterization in this
11 case, but a defendant's participation can be somewhat passive in
12 terms of simply receiving money under certain circumstances.

13 At any rate, I believe, based on what the parties have filed
14 and my review of it, the -- I will, on that -- on the extortion
15 element of the extortion charge, I will find that there is a
16 factual basis as to all four of the schemes.

17 Now, with regard to interstate commerce, which is an element
18 under the Hobbs Act, I reviewed the filings of the parties. I'm
19 not sure I'm convinced on all of the arguments that were made,
20 but one that I did find particularly helpful, and I think
21 applicable in this case, is the following. This is a -- well,
22 I'm going to cite a couple of cases for this.

23 The extraction attributed from local contractors erecting
24 facilities to serve an industry engaged in interstate commerce
25 satisfies the jurisdictional requirement of the Hobbs Act. That

1 is a concept that appears to have originated in an Eighth Circuit
2 case, *Hulahan v. U. S.*, 214 F.2d 441, pinpoint 445, from 1954.

3 As also has been cited in another case I've seen, this is
4 cited more than once, is *U. S. v. Addonizio*, 451 F.2d 49,
5 pinpoint 77, a Third Circuit case from 1972, in which cert was
6 denied at 405 U. S. 936.

7 Also, *U. S. v. Daley*, 564 F.2d 645, pinpoint 649, a Second
8 Circuit case from 1977.

9 First of all, I would say, with regard to that, that
10 providing services for a mine is, in my view, logically and
11 functionally equivalent to erecting facilities in an industry
12 that would be engaged in interstate commerce.

13 Beyond that, I will easily find that the coal industry --
14 that this was a coal mine in which coal was mined and, as the
15 parties have agreed to be sold out of state, the coal industry is
16 -- is easily involved in interstate commerce. Even if this coal
17 is being sold entirely in the State of West Virginia, the coal
18 industry is certainly an industry that was a past interstate
19 commerce and, therefore, and -- and this mine, therefore, was
20 involved in interstate commerce. It was owned, wholly owned, by
21 Arch Coal, which is a publicly traded company that is easily
22 involved in interstate commerce and, beyond that, the coal was
23 mined to fuel the interstate power grid, which is obviously a
24 part of interstate commerce. So, I have no problem finding that
25 the interstate commerce element is met and, therefore, a factual

1 basis for the extortion count.

2 Now, with regard to the tax evasion count, I will repeat,
3 just for ease of reference here, that the elements of the crime
4 of tax evasion set forth -- that is codified at 26 U. S. C.

5 Section 7201 are:

6 One, willfulness;

7 Two, the existence of a tax deficiency;

8 And, three, an affirmative act constituting an evasion, or
9 attempted evasion, of the tax, and that's -- those elements are
10 set forth, among other authorities, in *United States v.*
11 *Jinwright*, 683 F.3d 471, pinpoint 476, a Fourth Circuit case from
12 2012.

13 The second and third elements are rather easily met in this
14 case, so that's not been an issue.

15 The term "willfulness," however -- the parties added to the
16 information in the stipulation. However, it is my intention, and
17 I've indicated this informally to the parties before the hearing
18 to ask just a couple of questions of the defendant to firm up the
19 record on that particular point. Is there any objection to that?

20 MS. THOMAS: No, Your Honor.

21 MR. ALLEN: No, Your Honor.

22 THE COURT: All right. Mr. Runyon, you've -- you've
23 stipulated, agreed, let me just -- let me get the document so I
24 can reference it to you. Give me just a moment.

25 (Pause.)

1 THE COURT: Mr. Runyon, I'm referencing a document that
2 is entitled "Additional Stipulation of Facts" that was, I think,
3 filed with the joint memo on the questions that I posed at the
4 last hearing. It's docket 41 that was filed on May 27th, 2015.
5 That is a five-page document. Do you have it in front of you?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. And, on the last page of that
8 document, is that your signature which appears there?

9 THE DEFENDANT: Yes.

10 THE COURT: And have you read the additional
11 Stipulation of Facts?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. And do you agree that all of
14 the facts contained in that stipulation are true?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. And are those your initials
17 that appear on the other pages of that additional Stipulation of
18 Facts?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. So, in that document, you've
21 stipulated that you intentionally failed to give your tax
22 preparer the information about the kickbacks you received; is
23 that correct?

24 THE DEFENDANT: That's correct.

25 THE COURT: All right. And you understand that you are

1 required under the law to report the kickbacks as income and pay
2 taxes on it? Did you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And you -- you failed to do that and, did
5 you fail to do that, in part, because you didn't want to pay
6 taxes on the kickbacks?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And, also, perhaps because you didn't want
9 there to be a record of you having received those kickbacks?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And would your answers to those questions
12 be the same for tax years 2007 through 2012?

13 THE DEFENDANT: Yes, sir

14 THE COURT: All right. Based on those responses, I
15 will also find that there is an adequate factual basis for Count
16 2, the tax evasion count.

17 Now, Mr. Allen, have you received and read and reviewed --
18 have you reviewed with your client a copy of the Presentence
19 Report?

20 MR. ALLEN: We have, Your Honor.

21 THE COURT: All right. And, Mr. Runyon, have you
22 received and read and reviewed with your counsel a copy of the
23 Presentence Report?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Has the government received and reviewed a

1 copy of the Presentence Report?

2 MS. THOMAS: Yes, Your Honor

3 THE COURT: All right. As I indicated last time, I had
4 some questions regarding some of the guideline calculations. The
5 parties have assisted me on that, as well, with their filings
6 and, in particular, there are two things I want to -- I want to
7 discuss.

8 First, the leader or organizer enhancement, the -- give me
9 just a moment. I need to find my notes.

10 (Pause.)

11 THE COURT: All right. On the leader and organizer --
12 leader or organizer enhancement, to which I would note that the
13 parties have neither objected; in fact, they have agreed, the
14 first question is whether the defendant was an organizer, leader,
15 manager or supervisor of criminal activity in this case, the
16 four-part extortion scheme involving Mountain Laurel.

17 Application Note 4 to Section 3B1.1(a) provides the
18 following discussion regarding the defendant's role in criminal
19 activity:

20 In distinguishing a leadership and an organizational role
21 from one or -- of mere management or supervision, titles such as
22 "kingpin" or "boss" are not controlling. Factors the Court
23 should consider include the exercise of decision-making
24 authority, the nature of participation in the commission of the
25 offense, the recruitment of accomplices, the claim of a right to

1 a larger share of the fruits of the crime, the degree of
2 participation and planning or organizing the offense, the nature
3 and scope of the illegal activity, and the degree of control and
4 authority exercised over others.

5 There can, of course, be more than one person who qualifies
6 as a leader or organizer of a criminal organization or a
7 conspiracy. This adjustment does not apply to a defendant who
8 merely suggests committing the offense.

9 In interpreting Section 3B1.1, the Fourth Circuit noted that
10 there is a difference between the potential to exercise control
11 over an operation with the actual exercise or control. That is
12 *United States v. Cameron*, 573 F.3d 179, pinpoint 185, a Fourth
13 Circuit case from 2009.

14 In particular, the Fourth Circuit noted that in the cases in
15 which this Court has affirmed the application of leadership
16 enhancement, there was evidence that the defendants actually
17 exercised authority over those participants in the operation or
18 actively directed its activities.

19 In this case, the relevant factors support a finding that the
20 defendant was an organizer or leader of a criminal activity that
21 included the four component schemes.

22 First, the defendant exercised decision-making authority by
23 holding ultimate approval authority for vendors at the Mountain
24 Laurel property, demanding to meet and directly approve at least
25 one vendor, that would be Mr. Carter, and directly making

1 kickback agreements with at least two vendors, Barnette and
2 Porter.

3 Second, the nature of defendant's participation in the scheme
4 as the direct contact for some strict schemes, source of approval
5 for others, and recipient of ill-gotten gains in those
6 activities. The defendant did not serve as a direct contact.

7 Third, the record does reflect that the defendant appears to
8 have recruited Stephen Herndon to participate in the scheme with
9 Ellis. The defendant actively participated in many schemes or
10 parts thereof and helped plan others by approving vendors.

11 The nature and scope of the criminal activity was relatively
12 large and developed -- and involved the defendant, as well as two
13 other employees of Mountain Laurel, that being Stephen Herndon
14 and Griffith and six vendor -- six vendors.

15 The defendant certainly was in a position to exercise
16 control over others in a variety of ways and he certainly gained
17 a significant, if not the most significant, share of the
18 kickbacks compared to the other people involved. All of these
19 factors taken together indicate that the defendant was an
20 organizer or leader.

21 Now, with regard to the other component of this enhancement,
22 the parties have argued for the application of five or more
23 participants. That was what had me struggling at the -- one of
24 the things that had me struggling at the last hearing. Clearly,
25 the defendant, as well as Stephen Herndon and Griffith, were

1 participants. The only other possibilities of people who
2 participated and who knowingly were a part of the scheme would
3 have also been accurately characterized as victims of the
4 extortion, so we took a look at the law on that.

5 It seems that under the Fourth Circuit case of -- it's
6 *Spitler*, and I don't have the -- let me give you a cite on that.
7 I think everybody has that because it was briefed. *United States*
8 *v. Spitler*, 800 -- tell me if I get this cite wrong -- 800 F.2d
9 1267, a 1986 Fourth Circuit case; is that right?

10 Anyway, everybody briefed it, so they know the *Spitler* case.
11 Under *Spitler*, the Fourth Circuit held that victims may be
12 charged with aiding and abetting or conspiracy to commit
13 extortion if there -- if they participated in a way that can be
14 characterized as more than mere acquiescence.

15 More active participants in this case that look more like
16 active participants than victims arguably are certainly Barnette
17 and Porter.

18 However, the Fourth Circuit's position in *Spitler* appears
19 that it may be a minority position among the circuits and,
20 moreover, although *Spitler* was reaffirmed by the Fourth Circuit
21 in a case called *Ocasio*, that -- the United States Supreme Court
22 has granted cert on this very issue in *Ocasio* very recently and
23 we may anticipate the Supreme Court weighing in on this issue
24 sometime in the next year or so.

25 As a result, I'm a little hesitant to rely on *Spitler* as the

1 sole basis for this enhancement, and I will make that finding,
2 but if I -- if that was the only finding I had to make, I'm not
3 sure I'd be entirely comfortable with this enhancement.

4 However, the guideline applies for an alternative basis to
5 the five or more participants if the activity was otherwise
6 extensive. So, a defendant may receive a four-level enhancement
7 if he was an organizer or leader of criminal activity and if that
8 criminal activity was otherwise extensive.

9 In assessing whether an organization is otherwise extensive,
10 all persons involved during the scope of the entire offense are
11 to be considered. Thus, a fraud that involved only three
12 participants, but used the unknowing services of many outsiders,
13 could be considered extensive.

14 Additionally, in determining whether criminal activity is
15 otherwise extensive, many reviewing courts have examined the
16 totality of the circumstances, including not only the number of
17 participants, but also the width, breadth, scope, complexity and
18 duration of the scheme and, for everything I've said so far, I
19 would cite to Application -- 3B1.1, Application Note 3, and a
20 Fourth Circuit -- unpublished Fourth Circuit case, *United States*
21 *v. Beverly*, 284 F. Appx. 36, a 2008 Fourth Circuit case.

22 In this case, the criminal activity associated with the four
23 schemes involved at least three active participants and over a
24 million dollars in kickbacks. That's not to mention the vendors.
25 Additionally, the schemes utilized the assistance of numerous

1 unwitting participants, such as other employees of Mountain
2 Laurel, and intermediate financial institutions.

3 Further, the schemes were complex and involved rigging, at
4 least in one of them, involved rigging Mountain Laurel's bidding
5 system for jobs and had a substantial impact on the vendor
6 interactions at Mountain Laurel.

7 Finally, the extortionate schemes occurred continuously over
8 a period of a number of years. It's charged as about seven
9 years, I believe, and the Fourth Circuit has previously held in
10 *United States v. Boccone*, B-o-c-c-o-n-e, I'm not sure I've
11 pronounced that correctly, 556 Fed. Appx. 215, a 2014 Fourth
12 Circuit case, the Fourth Circuit found that criminal activity was
13 otherwise extensive where, among other things, it lasted for five
14 years.

15 As such, the Court finds that the totality of the
16 circumstances indicate that the criminal activity provided in
17 Count 1 of the information was otherwise extensive. The Court
18 thus finds that the defendant was an organizer or leader of
19 criminal activity that involved five or more participants or,
20 alternatively, and this is what I rely on primarily, was
21 otherwise extensive. Therefore, the leadership role is
22 appropriate.

23 I would also -- all right. Now, I also want to talk about
24 relevant conduct. I've found that all four schemes -- there's a
25 factual basis for all four schemes, so they are all easily

1 relevant conduct.

2 I would note that the parties, and I'm noting this because I
3 think this is important, especially for the government and, also,
4 for defense counsel for future reference. The parties filing on
5 this mixed standards and, in particular, mentioned or -- and
6 incorporates the standard from 1(b)1.3(A)(2), which refers to
7 common scheme or plan or course of conduct.

8 That standard expressly does not apply in this case because
9 this is a Hobbs Act count and that is expressly excluded from
10 application under 3D1.2. So, I just want -- and the government
11 is already aware of this, but I want to underscore that I'm
12 looking at 1B1.3, especially at (A)(2), very carefully, and it
13 doesn't apply in this case.

14 Nonetheless, I believe that all of the conduct involved in
15 the case and, in particular, the dollar figures, but all of it,
16 are covered as relevant conduct under Section 1B1.3(A), both
17 Subsections (a) and (b) and, also, potentially (A)(4). Also, I
18 note that there's no objection. So, I wanted to place all of
19 those findings on the record for the benefit of the parties and
20 the record.

21 That leaves, as I understand it, a whole series of what have
22 been called objections by the defense, but are there -- do we
23 really have objections outstanding?

24 MR. ALLEN: Your Honor, I'd like for Mr. Marsh to
25 address that.

1 THE COURT: That's fine. I would be happy to hear from
2 Mr. Marsh.

3 MR. MARSH: Thank you, Your Honor. We do not.
4 Basically, the remarks that we made to Mr. Gwinn with respect to
5 the draft PSR, really more in line with comments or additions
6 requested be made to various paragraphs. I think technically our
7 objection letter only included two technical objections to the
8 information contained in Paragraphs 25 and 28. I believe Mr.
9 Gwinn incorporated those changes in at least Paragraph 28.

10 Nevertheless, as the Court is aware, Ms. Thomas responded to
11 our objections or comments and/or request for notes to be
12 included, and most of that information is set forth in the
13 addendum to the final PSR, and so the Court now has, and I'm sure
14 the Court has reviewed that, and the government's position, as
15 well as the defendant's position, and the Court can obviously
16 evaluate those positions and attribute whatever weight the Court
17 deems fit. So, having said that, the -- Mr. Runyon has no
18 further objections to the PSR.

19 THE COURT: All right. Very well. That was my
20 impression, is that, for the most part, the ones that -- of
21 substance have been addressed one way or another by the probation
22 officer.

23 I read through them all. I found them to be of marginal
24 interest and really not having much of an impact on the overall
25 sentencing decision. Certainly, no impact on the guideline

1 calculation.

2 So, based on that, to the extent that there are remaining
3 objections, they're overruled, and I will adopt the Presentence
4 Report and addendum, as written.

5 I would note that I have received a sentencing memorandum
6 from both sides. I received a joint memorandum and a stipulation
7 in response to my inquiries at the last hearing.

8 Also, filed with and already part of the record, filed with
9 the defendant's sentencing memorandum, were a letter from the
10 defendant, as well as, I believe, 13 other letters on behalf of
11 the defendant, which I have read, and they are already a part of
12 the record.

13 On August 7th, 2014, the defendant appeared before this
14 Court and entered a plea of guilty to Count 1, which charges him
15 with extortion by wrongful use of fear of economic loss in
16 violation of 18 U. S. C. Section 1951, and Count 2, which charges
17 him with tax evasion, in violation of 26 U. S. C. Section 7201.
18 I will now adjudge the defendant guilty of each of those crimes
19 and accept the plea agreement that was previously filed.

20 All right. Ms. Thomas, I understand that the government now
21 has a motion under Section 5K1.1.

22 MS. THOMAS: Yes, Your Honor, and I would also like to
23 proffer the additional Stipulation of Facts, the original, to the
24 Court. We have filed one, but it's not the one with the original
25 signatures, so I don't know if the Court would like to have that.

1 THE COURT: All right. That's fine. I don't think
2 it's necessary --

3 MS. THOMAS: Okay.

4 THE COURT: -- because there's a copy attached to your
5 joint memo.

6 MS. THOMAS: Okay.

7 THE COURT: So, I don't think it's necessary.

8 First of all, do we need to hear this motion in camera?

9 MS. THOMAS: No, Your Honor.

10 THE COURT: All right. Then, you may -- and I didn't
11 get an actual written motion per policy now, correct?

12 MS. THOMAS: You did not get one.

13 THE COURT: All right. Very well. I'll hear your
14 motion.

15 MS. THOMAS: The United States makes a Motion for
16 Substantial Assistance under 5K1.1. Mr. Runyon provided
17 information that substantially assisted in the prosecution of
18 Gary Griffith, who is a retired maintenance manager at Mountain
19 Laurel. Griffith made a false statement to IRS agents regarding
20 his role and knowledge of kickbacks at Mountain Laurel.

21 At the time, the United States already had some information
22 regarding his involvement in kickbacks at Mountain Laurel, but
23 Runyon came in before he signed his plea agreement for a limited
24 proffer regarding a very specific kickback scheme, providing new
25 information regarding that specific scheme between him, Gary

1 Griffith, and another vendor that refurbished shuttle cars at
2 Mountain Laurel.

3 Runyon's information significantly assisted in Griffith
4 pleading guilty to making a false statement about receiving
5 kickbacks and the facts agreed upon and alleged in Griffith's
6 information and in the Stipulation of Facts was the information
7 Runyon provided regarding kickback schemes that focused on
8 shuttle car re-builds.

9 One of the factors in consideration for a 5K motion is the
10 truthfulness, completeness and reliability of any information or
11 testimony provided by the defendant. Just to make the Court
12 aware of this, after Mr. Griffith decided to plead guilty, there
13 was a small factual discrepancy regarding who began that kickback
14 scheme, but Runyon did, at the behest of his attorneys, consider
15 the discrepancy, and he admitted that while he initially thought
16 it was Griffith that began the scheme, it could have been him.

17 Furthermore, in the course of his cooperation and
18 assistance, at first, he was somewhat reluctant to cooperate with
19 the United States after that initial proffer. However, he did
20 come around and he became very helpful to the United States and
21 the United States made inquiries and that information was
22 reliable and he even further volunteered information to the
23 United States.

24 He also assisted in information regarding another vendor
25 paying kickbacks at Mountain Laurel, but the United States would

1 need to approach the bench about that. It's minor in comparison
2 to the assistance he provided in regards to Mr. Griffith,
3 however.

4 THE COURT: Do you want to approach the bench?

5 MS. THOMAS: We can, very briefly.

6 THE COURT: It's up to you.

7 MS. THOMAS: Can that be -- can that portion be sealed
8 that I talk about at the bench?

9 THE COURT: It may be.

10 You may approach.

11 And, Mr. Allen, Mr. Marsh, and your client will need to come
12 up for this, and we'll place this portion of the transcript under
13 seal.

14 (At side-bar.)

15 **SEALED SIDE-BAR CONFERENCE**

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1

2

(End side-bar.)

3

4

THE COURT: All right. At this point, we will be unsealed from here on out.

5

All right. Ms. Thomas, does that conclude your remarks?

6

MS. THOMAS: Yes, Your Honor.

7

THE COURT: All right. Mr. Allen, anything to add?

8

9

Well, before I get to that, Ms. Thomas, how many levels are you asking for?

10

MS. THOMAS: We're suggesting four levels, Your Honor.

11

THE COURT: All right.

12

Mr. Allen, anything to add to that?

13

14

MR. ALLEN: No, Your Honor. I mean, we have cooperated, and I think Mr. Runyon is entitled to the motion, and we'd ask the Court to grant it.

15

16

THE COURT: All right. Very well.

17

18

Pursuant to 5K1.1 of the guidelines, the Court may depart from the guidelines upon motion of the government stating that the defendant has provided substantial assistance in the investigation or prosecution of another person.

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21

In determining the appropriate reduction, the Court may consider:

22

23

One, the significance and usefulness of the defendant's assistance;

24

25

Two, the truthfulness, completeness, and reliability of any

1 information or testimony provided by the defendant;

2 Three, the nature and extent of the defendant's assistance;

3 Four, any injuries suffered or any danger or risk of injury
4 to the defendant or his family resulting from the assistance;

5 And, five, the timeliness of the defendant's assistance.

6 I will adopt as my findings the comments of the government
7 with regard to those factors. I will grant the motion, and I
8 will grant a four-level reduction under Section 5K1.1.

9 I am now ready to give my tentative findings as to the
10 applicable guidelines.

11 First, Ms. Thomas, is there a motion for the third level for
12 acceptance of responsibility?

13 MS. THOMAS: Yes, Your Honor.

14 THE COURT: All right. That motion will be granted.

15 There -- as the parties are aware, and as outlined by the
16 probation officer in the Presentence Report, there's two
17 different ways to calculate the guidelines that all results in
18 the same ultimate calculation. I'm going to give them based on
19 grouping them together, which I believe is the way it's set forth
20 in the Presentence Report.

21 Therefore, with regard to Count 1, I find a Base Offense
22 Level of 18; plus five for the amount of the loss; plus two for
23 the abuse of a position of private trust; plus four for the
24 aggravating role, for an adjusted offense level of 29.

25 Count 2, a Base Offense Level of 18, plus two for exceeding

1 criminal proceeds exceeding \$10,000.00, for an adjusted offense
2 level of 20.

3 The highest of the two adjusted offense levels is applied.
4 Therefore, that is a 29; minus 3 for acceptance of
5 responsibility; minus 4 for the 5K1.1 motion, for a Total Offense
6 Level of 22; a criminal history category of I based on 0 criminal
7 history points, yields an imprisonment range of 41 to 51 months;
8 1 to 3 years of supervised release as to each count, which would
9 run -- is mandated by statute to run concurrently; a fine range
10 of \$7,500.00 to \$3.6 million; and restitution to Arch Coal as to
11 Count 1 of \$1,000,000.00 and, by agreement as to Count 2, of
12 \$325,485.05 to the IRS, as well as a -- and I understand some of
13 that has been paid, a good bit of that has been paid on both
14 counts, and a mandatory special assessment of \$200.00, which I
15 also note has been paid.

16 Are there any legal objections to my tentative findings as
17 to the applicable guidelines?

18 MS. THOMAS: No, Your Honor.

19 MR. ALLEN: No, Your Honor.

20 THE COURT: All right. I note, also, that Arch Coal is
21 identified as a victim in this case and the IRS. Typically, a
22 governmental victim doesn't make any sort of presentation,
23 although I won't exclude them, if they want to.

24 Ms. Thomas, does anybody -- first of all, have the victims
25 been accorded all of their rights and notifications under the

1 various victims rights statutes and regulations?

2 MS. THOMAS: Your Honor, while we didn't consider Arch
3 Coal to be a statutory victim under this case because the loss
4 caused by the defendant's actions under the Hobbs Act was not
5 caused by the specific conduct underlying the -- I'm sorry, the
6 defendant's offense, he -- we have agreed that he will pay a
7 million dollars to Arch Coal in -- under the statute. I think
8 that Mr. Bryant -- oh, Mr. Carey is here on behalf of Arch Coal
9 and they are aware of the proceeding.

10 THE COURT: Do they wish to -- Mr. Carey, do you wish
11 to address the Court on behalf of Arch Coal?

12 MR. CAREY: No, Your Honor.

13 THE COURT: All right. Very well.

14 I assume the same is true of the IRS?

15 MS. THOMAS: Yes. They are here, also.

16 THE COURT: All right. And they don't wish to address
17 the Court?

18 MS. THOMAS: I don't believe so.

19 THE COURT: All right. Very well.

20 All right. Mr. Runyon, at this time, the Federal Rules of
21 Criminal Procedure give the right to make any statement that you
22 would like to make, although you're not obligated to make any
23 statement. However, if you do choose to make a statement, I
24 would ask that you stand to do so.

25 THE DEFENDANT: Yes, sir. I made a huge mistake. I

1 shouldn't have done what I've done.

2 I hurt a lot of people. I hurt my family. I hurt my
3 career. I hurt the employees that had worked for me. And I hurt
4 Arch Coal. I can sit here and apologize all day, but if I could
5 go back and do it again, I would change everything.

6 I think what best describes my position on all of this is
7 the letter that was submitted to you that I wrote myself. I
8 think that tells about how I've felt about this situation. I
9 made a huge mistake, but I would just like another chance to be a
10 better man, and I think I am a better man right now, and do
11 better things with my life, and get my life back on track.

12 THE COURT: Thank you, sir. You may be seated.

13 Anything else on behalf of the defendant before I impose
14 sentence?

15 MR. ALLEN: Briefly, Your Honor. I think our
16 sentencing memorandum pretty well laid out our position with
17 regard to the scheme that took place there at Mountain Laurel and
18 how it came about and the various participants, the roles, and so
19 forth, and our objective was, we feel like that there was --
20 there was a little bit of -- after we entered a plea to
21 extortion, we feel like we left the door open as to some
22 embellishments as to what's happened, but I know the Court has
23 read it, and I know the Court can listen and has taken it into
24 consideration based on the Court's questions and so forth, with
25 regards to our Stipulation of Facts, and that's all basically we

1 want to ask.

2 With respect to the -- would you like me to address the 3553
3 factors at this point in time?

4 THE COURT: This is your opportunity to address the
5 Court before I impose sentence, Mr. Allen, so I will leave it up
6 to you as to your presentation.

7 MR. ALLEN: All right. Well, I think there are some
8 things that I would like the Court to take into consideration
9 with regard to mitigation, and one of the things that -- you
10 know, I think is important, and one of the issues that was raised
11 with the Court at one point in time is, you know, where was --
12 where was the retribution when the payments stopped, okay?

13 And I think, taken into consideration, these people were
14 friends. They socialized together, they worked together, and
15 they -- I mean, it was a close group of people that were working
16 together down there at Mountain Laurel.

17 Now, these vendors, they were good vendors. They provided
18 good services. They did good work. And, I think, when some of
19 them stopped for various reasons, and the Court has been aware of
20 the various vendors that stopped making payments, there was no
21 retribution, and I think the reason and the justification for
22 that was, Mr. Runyon ultimately put the best interest of Mountain
23 Laurel in front of his getting the kickbacks.

24 I mean, like I said, you know, they quit paying. At the
25 same time, they were providing good services, they were providing

1 good work, and he needed to keep that good work and good services
2 being provided to Mountain Laurel, and so there wasn't
3 retribution.

4 There's no question about the fact that these people were
5 fearful, had economic fear with regard to the, you know, making
6 the payments. They knew how much power he had. He knew -- they
7 knew how much authority he had, but I think those things are also
8 important with regard to taking into consideration the fact that
9 there really wasn't -- in the ultimate end, there really wasn't
10 any retribution to these people that stopped getting kickbacks.

11 With regard to the seriousness of the offense and the just
12 punishment of the offense, as this Court is well aware, Mr.
13 Runyon has lost his job. He lost a brilliant career. He worked
14 hard. He came up through the ranks. It's almost inconceivable
15 that he would accept this kind of money in light of the situation
16 that he was in but, you know, people make mistakes.

17 And, I think, based on the letters and comments of the
18 people that have been close with Mr. Runyon, a lot of employees,
19 a lot of community members, and so forth, that have written
20 letters, you know, I think they paint a picture of Mr. Runyon as
21 being a good person.

22 He's good with people. He took care of his employees. He
23 cared about his employees.

24 He was one of these types of managers that, you know, that
25 the people that worked for him, the managers -- you know,

1 marriages are optional; funerals are mandatory. You know, you
2 support the people that work for you. You take good care of
3 them.

4 And I think, basically, Mr. Runyon is a very good person.
5 He made a serious, terrible mistake, and he's paid a serious and
6 terrible price already, in addition to what the Court will impose
7 here today, and with regard to incarceration or any other
8 penalties.

9 I think we can take into consideration, when we're talking
10 about the seriousness and just punishment, the fact that, even
11 though there were some other employees of Mountain Laurel that
12 participated in this, Mr. Runyon is the one that pled basically
13 to the substantive offense of extortion. He's the only one that
14 pled guilty to that subsequent offense.

15 And, like I say, it really wasn't a classic extortion
16 scheme. I think -- and vendors, in this particular case, they
17 did more than acquiesce, they participated, but I think the
18 government has acknowledged, also, that they benefited greatly.
19 I mean, they were making huge amounts of money. Arch was doing
20 well, the vendors were doing well, and Mr. Runyon was doing well,
21 and everyone was basically sharing the wealth down there.

22 As far as the punishment, the just punishment, I think the
23 message has already been sent that the vendors and operators
24 that, you know, if you engage in this type of conduct, you're
25 going to be prosecuted.

1 We're talking about an economic crime here, Judge, and that
2 doesn't justify it. That doesn't -- it's a violation of the
3 criminal law, but at the same time, I think economic crimes are
4 looked at a little bit differently and I would ask the Court to
5 take that into consideration.

6 As to the adequate deterrence, he has no prior criminal
7 record. In our sentencing memorandum, we talked a little bit
8 about the fact of the way the sentencing guidelines are
9 structured; that, you know, the person that comes in with an
10 absolutely clean record is penalized just a little bit because
11 people that have one -- one violation are in the same category.
12 We have discussed that and I'm sure the Court has, too. I think
13 Mr. Capece has brought that to the Court's attention on several
14 occasions in the past.

15 He's worked hard all of his life and, as far as deterrence,
16 he's -- he was fired and -- and one of the things I think speaks
17 volumes about Mr. Runyon, he was fired and, immediately after he
18 got fired, he gets a job as a laborer in the community that he
19 worked in, that he lived in, that he was a powerful person in
20 and, since his conviction and since his firing, he's worked
21 basically 40 hours a week doing common labor and, if that's not
22 humiliating based on where he was and where he is, and it shows
23 the type of guy I think he really is, that he's not going to sit
24 home, he's not going to engage in a lot of self pity and, you
25 know, oh, woah-is-me-type conduct, that he's made a mistake, he's

1 owned up to it, he needs to get it behind him, and he needs to
2 move forward, and I think -- I think what's happened to him is
3 also -- it takes -- certainly, is an adequate deterrence.

4 With regard to protection of the public, he's 47 years old.
5 He has no prior criminal record, no prior arrest, no indication
6 of any violence whatsoever in this particular case, and we would
7 -- I mean, basically, he's no danger to his community. He's been
8 working in that community, he's still lives in the community, and
9 he's a first-time offender of a non-violent crime.

10 We would ask the Court, basically, to grant a downward
11 variance from the guideline range that the Court has found
12 appropriate, at this particular point in time, to avoid any, what
13 we believe would be a sentencing disparity, based on the types of
14 crimes that the government has allowed all of the other vendor
15 participants, Mr. Herndon, Mr. Griffith, and each of these other
16 people to plead to that don't even have guidelines that even come
17 close to what Mr. Runyon is exposed to, and we would ask the
18 Court to take that into consideration, grant a downward variance,
19 so that there will not be an unwarranted discrepancy and
20 disparity in the sentencing of the individuals that are all
21 involved in these -- in this scheme.

22 Like I said, and I'm repeating myself a little from my
23 sentencing memorandum, but he's been a hard worker. I think he's
24 got a lot that he can offer in the future to his community, and
25 his family, and to this state.

1 I just, you know, it's just such a waste of -- what a shame.
2 I mean, what a waste of time, and I would ask the Court to take
3 this into consideration and give him the opportunity to start
4 over, to rebuild, and make a contribution, and to, you know, like
5 I say, the community and the state.

6 And I -- and, like I say, Judge, I think -- I've known Mr.
7 Runyon for a long time and, like I say, he's a good person,
8 basically, but he made a terrible, terrible mistake and he's paid
9 dearly for it. Thank you.

10 THE COURT: Thank you, Mr. Allen.

11 MR. ALLEN: Yes, sir?

12 THE COURT: I said thank you, Mr. Allen.

13 MR. ALLEN: Oh, I'm sorry.

14 THE COURT: Ms. Thomas?

15 MS. THOMAS: I'll be brief. The Court is quite
16 familiar with this case and the roles the individuals involved
17 have played.

18 This was not just a mistake. This was years of extortion,
19 and years of playing favorites with vendors, and Mr. Allen is
20 absolutely right, what a waste of talent. No one has ever argued
21 that Mr. Runyon was a bad coal miner. He did make a lot of money
22 for Arch Coal, but if he had been spending his time, instead of
23 extorting vendors and making sure they were current on these
24 payments, actually doing what he was supposed to do, think about
25 how much more profitable that mine could have been.

1 He was the person who made the decisions, the person
2 ultimately in charge of Mountain Laurel and, because of this, he
3 was the person who maintained the corruption there. He was the
4 person who decided who were the winners and who were the losers.
5 He kept it a secret from his employer, and he made sure that the
6 vendors that he selected would go along with his plans by hinging
7 their financial success, or their downfall, on their payment of
8 kickbacks, or what they considered to be their potential economic
9 downfall, and so they went along with his arrangement.

10 They paid, they continued to seek work at Mountain Laurel,
11 and they paid again, because they feared that, if they didn't,
12 the defendant would ensure that they'd lose what had essentially
13 become very valuable, essentially sole source contracts at
14 Mountain Laurel, contracts that weren't really subject to
15 competition.

16 In his sentencing memo, he, himself, alleges that the
17 vendors' bids and payments amounts were at the margins, higher
18 than they needed to be, to ensure that they made the most money
19 as possible at the expense of Arch Coal, money that they could
20 then use to pay kickbacks, keep their business profits high, and
21 keep their arrangement with Runyon going.

22 He could have ended this extortion with one word. He could
23 have stopped the corruption. And he could have assured that Arch
24 Coal got the very best contract price from each of the vendors,
25 but he chose not to.

1 He could have leveled the playing field and invited
2 competition between vendors in the Logan County area and maybe
3 even had some new vendors at Mountain Laurel, but he didn't.

4 And it's true, as the defendant has pointed out today, that
5 he has the most significant charge, and the most significant
6 agreed upon guideline range in the plea agreements, but he was
7 one of the last people to come in and cooperate, and he also had
8 the most significant role in all of the schemes at Mountain
9 Laurel, and I would ask the Court take that into consideration
10 when determining how to sentence the defendant.

11 THE COURT: Thank you, Ms. Thomas.

12 All right. After consideration of the advisory guidelines
13 and the other applicable factors from 18 U. S. C. Section
14 3553(a), including the guidelines, I am now ready to impose
15 sentence.

16 Will the defendant please stand?

17 Mr. Runyon, you were a leader of a long-term extortion
18 scheme that had the potential to be financially damaging to your
19 employers and froze legitimate contractors out of doing a
20 lucrative business at your mine. This went on for years and
21 netted you and others over a million dollars in cash kickbacks.
22 This is a serious offense requiring a just punishment.

23 I recognize that you have no criminal history and that
24 you've been an otherwise productive and valued member of the
25 community. The letters on your behalf reflect that.

1 And I would note, everyone here, I think, agrees that you
2 are a talented man and that this circumstance in which you find
3 yourself now is a waste of that talent. I do believe that you're
4 less likely to offend than most defendants that I see and pose
5 little danger to the community.

6 However, this sentence is about deterrence and the
7 seriousness of this offense. Now, the deterrent message of these
8 cases has been muddled a bit by some of the problems that have
9 popped up in these cases, but it is nonetheless an extremely
10 important component of my sentencing decision.

11 Your crime was a raw abuse of the power that you held as a
12 result of your position with your company. You appear to be very
13 intelligent and you are very well educated and, for those
14 reasons, you were able to avoid detection of this scheme for a
15 very long time. It also means you should have known better.

16 Through these cases and another similar round of cases a
17 couple of years ago involving Alpha, I've learned a great deal
18 about the business corruption that exists in the coal industry.
19 You were deeply involved in this corruption.

20 Everyone in West Virginia knows that the coal industry is
21 under assault on multiple fronts and is struggling, to say the
22 least. While your conduct may not have had an obvious impact on
23 the industry as a whole, it is also clear that you and your
24 cohorts in this case are by no means the only individuals
25 involved in this kind of activity. And, while corruption

1 certainly isn't necessarily the greatest threat, it certainly
2 does not help an industry that is already ailing.

3 This sentence needs to send a message to others in the coal
4 industry. The message is that even smart people like David
5 Runyon will eventually get caught, and when they do, serious
6 penalties await business corruption in the coal industry.

7 I want to add something else. In previous hearings in these
8 cases, I've characterized the vendors from whom you were
9 receiving kickbacks as "victims." In point of fact, you're
10 charged with extortion, and where there's extortion, there is
11 necessarily someone who is a victim of that extortion.

12 Now, I recognize that the vendors here are not as pure as
13 the wind driven snow. I do not see them as wearing white hats
14 while you don a black hat. Nonetheless, without your power and
15 approval behind this whole thing, I don't see it happening. I
16 could say the same thing about Mr. Griffith and Mr. Herndon to a
17 lesser degree.

18 I view those of you in the company, and you in particular,
19 as most culpable because you controlled the massive purse strings
20 of this company. You could have stopped this before it ever
21 started. You didn't. Instead, you lined your pockets richly
22 with tax free kickbacks, and now the lives of nine other
23 individuals and their families and companies have been forever
24 affected as a result.

25 I've considered your counsel's argument for a variance, but

1 I find that the deterrent message of these prosecutions, and this
2 sentence in particular, would be undermined by a variance in your
3 case.

4 Based on all of these factors, it is the judgment of this
5 Court that you be committed to the custody the Federal Bureau of
6 Prisons for a period of 41 months.

7 Upon release from prison, you shall be placed on supervised
8 release for a term of three years.

9 Within 72 hours of release from custody, you shall report in
10 person to the U. S. Probation Office in the district which you
11 are released.

12 While on supervised release, you must not commit another
13 federal, state or local crime; you must not possess a firearm or
14 other dangerous weapon; and you must not unlawfully possess a
15 controlled substance.

16 You also must comply with the standard terms and conditions
17 of supervised release as recommended by the U. S Sentencing
18 Commission and as adopted by this Court, including the standard
19 condition that you shall participate in a program of testing,
20 counseling and treatment for drug and alcohol abuse as directed
21 by your probation officer.

22 You must also abide by the special conditions of supervised
23 release as set forth in the local rules of this Court.

24 When I talk about restitution in a moment, I will have more
25 to say about special conditions of supervised release.

1 Given the substance abuse issues addressed in the
2 Presentence Report, I do not find that you pose a low risk of
3 future substance abuse and, accordingly, I will order that you
4 submit to one drug test within 15 days of release and at least
5 two periodic drug tests thereafter as a condition of supervised
6 release.

7 In addition, you have paid substantial monetary penalties
8 already and are obligated to pay them additionally in the way of
9 restitution. However, I believe that a fine of \$15,000.00 would
10 be appropriate in this case and will be imposed. And I will --
11 the -- if it's not paid within 15 days of today, interest will
12 accrue on that fine.

13 I note that you did pay the mandatory special assessment.

14 I am now ready to talk about restitution and, for that, you
15 may be seated.

16 With regard to mandatory restitution in Count 1, as I
17 understand it, the defendant has already paid in full the
18 \$1,000,000.00 to the Court Clerk's Office, and I simply need to
19 enter an order directing the payment of that money to Arch Coal;
20 is that correct?

21 MS. THOMAS: Yes, Your Honor.

22 THE COURT: All right. Well, I will include that in
23 the restitution portion of the J&C, but I do note that that
24 portion has been paid.

25 With regard to Count 2, I don't believe I'm authorized to

1 order restitution, but it has been agreed to in the plea
2 agreement, and I will, therefore, order it on the basis of the
3 agreement.

4 As I understand, the defendant has already paid -- and this
5 is to -- this is to go to the IRS. The full amount was
6 \$325,485.05. The defendant has already paid \$34,000.00, leaving
7 a balance of \$291 -- I'm sorry, \$291,485.05.

8 Is my math correct on all of that?

9 MR. ALLEN: Yes, Your Honor.

10 THE COURT: All right. So, I find that that is the
11 full amount of the loss.

12 Now, there's mention in the Presentence Report, I think, of
13 a payment schedule. How -- have the parties talked about how
14 that will be paid?

15 MS. THOMAS: Your Honor, I believe that Mr. Runyon
16 agreed to pay at least \$1,000.00 a month in restitution, but if
17 the Court looks at 18 U. S. C. 3572, a person who is sentenced to
18 restitution is supposed to make that payment immediately, unless
19 in the interests of justice, the Court finds that it needs to be
20 paid in installments.

21 I believe Mr. Runyon has a large amount of funds available,
22 but -- so I point that statute out to the Court in relationship
23 to making it immediately payable or not.

24 THE COURT: Well, I think what I typically do, and you
25 got to it before I did, I will typically make financial

1 obligations in this case, the fine, and remaining restitution due
2 immediately, but I will allow it to be paid on a schedule, if
3 that's what the parties want.

4 Mr. Allen, is that what is contemplated?

5 MR. ALLEN: Yes, Your Honor, and we would ask that we
6 be allowed to take advantage of the agreed upon payment schedule.
7 Mr. Runyon is going to pay this as quickly as he can, but we -- a
8 lot was depending on what happened here today and how long he was
9 going to be away. He's got family that he needs to support, and
10 a child that is in college, and we're trying to take those things
11 into consideration in how much we can pay right now.

12 THE COURT: All right. Well, given the size of the
13 obligation in comparison to his net worth, I will allow -- first
14 of all, I will make payment of the restitution a special
15 condition of his supervised release, but I will allow, at least
16 initially -- I mean, I think if he's going to pay it all before
17 the end of the supervised release, \$1,000.00 a month isn't going
18 to cover it, but it will be a starting point. So, I will allow
19 the \$1,000.00 a month payment schedule, but I will make it a
20 special condition of his supervised release that it be paid in
21 full during the period of supervised release. That includes both
22 the restitution and fine.

23 And, also, given the net worth, I'm not going to waive the
24 interest on the restitution. So, the interest -- I don't know if
25 the rules are similar on that. I've never looked at that,

1 actually.

2 With regard to the fine, under 18 U. S. C. Section 3612(f),
3 that's the basis for interest accruing, if not paid within
4 15 days. I don't know. Does that apply to restitution or not?
5 I've never run across that question.

6 MS. THOMAS: I would have to look into that, Your
7 Honor. I don't know right here right now.

8 THE COURT: All right. Well, the only perimeter I'm
9 going to put on restitution is that it needs to be paid during
10 the -- at some point before the expiration of supervised release,
11 of the period of supervised release, and the incentive to pay
12 that sooner than later is the fact that there will be interest
13 accruing on it. So -- but I will allow at least -- I will allow
14 the \$1,000.00 a month payment schedule.

15 Those payments should -- will commence -- first of all,
16 during the period of incarceration, regardless of the financial
17 obligation, I generally direct that a defendant pay \$25.00 per
18 quarter through the Inmate Financial Responsibility Program.
19 Then, the \$1,000.00 a month schedule will kick in 30 days after
20 his release from custody and those payments should be forwarded
21 to the United States District Clerk's Office, 300 Virginia
22 Street, East, Charleston, West Virginia, 25301, for disbursement
23 provided that will cover both the -- well, I don't know what his
24 plans are with regard to payment of the fine, but for the time
25 being, that will -- actually, that will go first to the payment

1 of restitution and then the fine. I think actually the law
2 requires that but, at any rate, it will be a special condition of
3 his supervised release that he pay both in full.

4 I will add, too, that in addition to deterrence, the payment
5 of the financial obligations was one of the reasons I've selected
6 a three-year term of supervised release. I would simply notify
7 the defendant that if he is -- if he's current on the financial
8 obligations, that the Court would be willing to consider a
9 reduction in the supervised release period.

10 Now, we have in this court, I think, sort of an informal
11 rule, but it's a rule that the defendants almost always are
12 required to serve two-thirds of their period of supervision, but
13 the Court would be willing to consider, at that point, reducing
14 or terminating the term of supervised release if the financial
15 obligations are current.

16 With regard to these financial obligations, I want to add
17 the following special conditions of supervised release:

18 The defendant -- first, the defendant shall provide the
19 probation officer access to any requested personal or
20 business-related financial information;

21 Two, the defendant shall be prohibited from incurring new
22 credit charges or opening additional lines of credit without the
23 approval of the probation officer until all monetary obligations
24 have been satisfied;

25 And, three, the defendant shall apply all monies received

1 from income tax refunds, lottery winnings, judgments, and other
2 anticipated or unanticipated financial gains to any outstanding
3 court-imposed monetary obligation;

4 And, finally, the defendant shall cooperate with the IRS
5 with regard to the determination of the civil income tax
6 liability for himself individually for the tax years 2006 through
7 2013. I think, for the most part, that's already been done, but
8 I'm going to include that as a special condition of supervised
9 release.

10 I would note, too, for the record, that in considering the
11 appropriate payment schedule that we've discussed today, I have
12 considered the defendant's financial resources and other assets,
13 his projected earnings and other income, and his financial
14 obligations, including those to dependents.

15 I would add, too, as this would be a condition related to
16 the financial obligations, that the defendant shall notify the
17 Court and the Attorney General, i. E., the Justice Department, of
18 any material change in his economic circumstances that may affect
19 his ability to pay restitution.

20 Upon receipt of such notice, the Court may adjust the
21 payment schedule or require immediate payment in full as the
22 interests of justice so require, and that is pursuant to 18 U. S.
23 C. Section 3664(k).

24 Mr. Allen, are there any recommendations that you or your
25 client would like for me to make to the Federal Bureau of

1 Prisons?

2 MR. ALLEN: Yes, Your Honor. We would ask that the
3 Court recommend that Mr. Runyon be incarcerated at the camp in
4 Ashland, Kentucky. I understand that there's a camp there.

5 THE COURT: All right. He doesn't have any time in
6 custody yet; is that correct?

7 MR. ALLEN: I'm sorry, Your Honor?

8 THE COURT: He doesn't have any time in custody yet; is
9 that correct?

10 MR. ALLEN: No time in custody.

11 THE COURT: Okay. Any other recommendations?

12 MR. ALLEN: This is -- I don't think there's another
13 facility that's any closer to his home down there in Delbarton,
14 but the closest facility that we -- can I double check that and
15 call your clerk with regard to location, if there's someplace
16 that's closer than Ashland?

17 THE COURT: You may. You may.

18 I will make that recommendation that he be --

19 MR. ALLEN: I understand McDowell has a camp.

20 THE COURT: I know there's a facility there. I don't
21 know if there's camp there or not, to tell you the truth.

22 MR. ALLEN: Let me call the clerk.

23 THE COURT: All right. Well, we'll make the
24 recommendation either specifically, or in general, that he be
25 designated to a camp as close to his home as possible.

1 MR. ALLEN: And that he be permitted to stay on bond
2 pending reporting, to self-report.

3 THE COURT: That's another question, is there any
4 objection to that?

5 MS. THOMAS: No, Your Honor.

6 THE COURT: All right. I will allow the defendant to
7 remain on his current bond pending reporting. I will allow him
8 to voluntarily surrender as directed by the United States Marshal
9 Service.

10 I will also, given the -- again, the information I noted
11 earlier in the Presentence Report, I will recommend that the
12 Bureau of Prisons evaluate the defendant and place him in any and
13 all appropriate drug treatment -- drug and alcohol -- more
14 appropriately, alcohol treatment programs, including the RDAP
15 Program that's offered by the Bureau of Prisons.

16 Mr. Runyon, I note there is a significant appeal waiver
17 contained in your plea agreement. As qualified by that waiver,
18 you have the right to appeal the judgment of this Court. Any
19 notice of appeal must be filed with the Clerk not more than
20 14 days from the date of the entry of the judgement order.

21 If you desire counsel on appeal and you are unable to retain
22 counsel, the appropriate Court will review a financial affidavit
23 filed by you to determine whether or not to appoint counsel.

24 Do you understand your right to appeal and the 14-day filing
25 requirement?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: I will place the Presentence Report under
3 seal subject to counsel's right to unseal as necessary for
4 appeal.

5 Any other matters we need to take up in this case?

6 MS. THOMAS: Very briefly, Your Honor. The United
7 States requested in its sentencing memo that the Court in its
8 restitution order include a breakdown of applicable tax loss.
9 It's set out in Paragraph 89 of the PSR.

10 THE COURT: Would that be under the Restitution Section
11 of the J&C?

12 MS. THOMAS: Yes, Your Honor

13 THE COURT: All right. And that was revised, so what's
14 -- the revised numbers are actually in one of the sentencing
15 memos, aren't they?

16 MS. THOMAS: The revised numbers are in Paragraph 89 of
17 the PSR.

18 THE COURT: All right. All right. Well, we will -- we
19 will incorporate those specifically in the J&C.

20 MS. THOMAS: Thank you.

21 THE COURT: Anything else we need to take up today?

22 MR. ALLEN: No, Your Honor. Thank you.

23 THE COURT: All right. Thank you.

24 (Proceedings concluded at 3:10 p.m., June 9, 2015.)

25

1 CERTIFICATION:

2 I, Ayme A. Cochran, Official Court Reporter, certify that
3 the foregoing is a correct transcript from the record of
4 proceedings in the matter of United States of America, Plaintiff
5 v. David E. Runyon, Defendant, Criminal Action No. 2:14-cr-00117,
6 as reported on June 9, 2015.

7
8 s/Ayme A. Cochran, RMR, CRR

June 24, 2015

9 Ayme A. Cochran, RMR, CRR

DATE